

## **ANNUAL REPORT OF THE JUDICIAL OFFICER**

### **FISCAL YEAR 2012**

The Judicial Officer issues final decisions for the Secretary of Agriculture in all cases appealed from initial decisions of USDA's administrative law judges. These cases arise under approximately 38 statutes administered by the Secretary of Agriculture. During FY 2012, the Judicial Officer issued cases arising under the Agricultural Marketing Agreement Act, the Animal Welfare Act, the Commercial Transportation of Equine for Slaughter Act, the Horse Protection Act, the Packers and Stockyards Act, and the Perishable Agricultural Commodities Act. The Judicial Officer also issues reparation orders for money damages under the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, issues final decisions in cases appealed from initial decisions of the Commissioner of the Plant Variety Protection Office under the Plant Variety Protection Act, and rules on motions filed by parties to proceedings and questions submitted by administrative law judges. Appeals from the Judicial Officer's decisions lie primarily to the United States Courts of Appeals, but, under some statutes, appeals lie to the United States District Courts. USDA has no right of appeal from a decision by the Judicial Officer.

The Office of the Judicial Officer is staffed by three persons: the Judicial Officer, an attorney, and a legal technician, who also serves as secretary, paralegal, and administrative assistant. Currently, the attorney and legal technician positions are vacant.

The following two tables provide an indication of the production of the office and the direction of the backlog in the office.

#### **CASES AND MOTIONS RECEIVED – DECIDED – PENDING**

	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Cases and Motions Pending Beginning of the FY	7	1	7
Cases and Motions Received During the FY	515	462	531
Cases and Motions Decided During FY	521	456	533
Cases and Motions Pending End of the FY	1	7	5

### INTERVAL BETWEEN REFERRAL TO JO AND JO DISPOSITION

<b>Fiscal Year</b>	<b>Median Interval</b>	<b>Longest Interval</b>	<b>Number of Cases Over 4 Months</b>	<b>Number of Cases Over 8 Months</b>
2000	3 wks.	6 mo. 2 wk.	1	0
2001	1 wk.	2 mo.	0	0
2002	2 wk.	3 mo. 2wk.	0	0
2003	1 wk.	11 mo. 2 wk.	3	3
2004	1 wk.	1 yr. 5 mo.	4	4
2005	1 wk. 3 da.	1 yr. 6 mo.	3	1
2006	2 wk.	1 yr. 2 wk.	6	4
2007	1 mo. 3 wk.	11 mo. 1 wk.	6	2
2008	2 wk.	1 yr. 7 mo.	10	7
2009	1 wk. 3 da.	1 yr. 11 mo.	9	5
2010	5 da.	7 mo. 3 wk.	10	0
2011	1 da.	5 mo. 3 wk.	2	0
2012	4 da.	8 mo. 2 wk.	4	1

The following are summaries of major decisions issued by the Judicial Officer in FY 2012.

### SUMMARIES OF MAJOR DECISION BY THE JUDICIAL OFFICER

#### Fiscal Year 2012

In *In re Mitchell Stanley*, A.Q. Docket No. 11-0215, decided by the Judicial Officer on October 4, 2011, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding that Mitchell Stanley violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the Regulations (9 C.F.R. pt. 88). The Judicial Officer found Mr. Stanley failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Stanley was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer rejected Mr. Stanley's request that the Judicial Officer reduce the \$11,525 civil penalty assessed by the Chief ALJ based upon Mr. Stanley's inability to pay the civil penalty. The Judicial Officer stated a respondent's inability to pay a civil penalty is not a factor that must be considered when determining the amount of a civil penalty for violations of the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the Regulations (9 C.F.R. pt. 88). The Judicial Officer also rejected Mr. Stanley's request that the Judicial Officer set aside the Chief ALJ's decision because the Chief ALJ's decision made Mr. Stanley physically ill and emotionally upset. The Judicial Officer stated the impact of an administrative law judge's decision on a respondent's physical and emotional health is not a basis for setting aside that decision.

In *In re Richard L. Reece*, P.&S. Docket No. 11-0213, decided by the Judicial Officer on October 17, 2011, the Judicial Officer affirmed the Administrative Law Judge's decision concluding Richard L. Reece failed to pay the full purchase price for livestock within the time

period required by the Packers and Stockyards Act. The Judicial Officer found Mr. Reece failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Reece was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer rejected Mr. Reece's contention that his violations of the Packers and Stockyards Act were not willful and rejected Mr. Reece's contention that the application of the default provisions of the Rules of Practice (7 C.F.R. §§ 1.130-.151) deprived him of due process. The Judicial Officer also rejected Mr. Reece's request that the Judicial Officer set aside the ALJ's decision because he paid or entered into payment plans with the two livestock sellers named in the Complaint. The Judicial Officer stated the Packers and Stockyards Act requires market agencies and dealers purchasing livestock to pay the full amount of the purchase price before the close of the next business day following the purchase of the livestock and the transfer of possession of the livestock (7 U.S.C. § 228b(a)). Mr. Reece's payments after the time payment was due and Mr. Reece's entry into payment plans do not comply with 7 U.S.C. § 228b(a). Moreover, Mr. Reece's failures to pay for livestock and failures to pay for livestock when due constitute unfair and deceptive practices, in violation of 7 U.S.C. § 213(a).

In *In re Melanie H. Boynes*, AWA Docket No. 11-0012, decided by the Judicial Officer on October 18, 2011, the Judicial Officer affirmed the Administrator's denial of an Animal Welfare Act license application submitted by a partnership comprised of Melanie H. Boynes and Steve Sipek. In addition, the Judicial Officer disqualified Ms. Boynes from obtaining an Animal Welfare Act license for 1 year. The Judicial Officer based the Animal Welfare Act license denial and disqualification on the failure of the partnership to correct deficiencies found during APHIS's inspection of the partnership premises, Mr. Sipek's continued exhibition of large cats without an Animal Welfare Act license, and Mr. Sipek's history of animal care and non-compliance with Animal Welfare Act regulations and standards.

In *In re KDLO Enterprises, Inc.* (Order Denying Pet. to Reconsider), PACA Docket No. D-09-0038, decided by the Judicial Officer on October 21, 2011, the Judicial Officer denied KDLO's petition to reconsider *In re KDLO Enterprises, Inc.*, \_\_ Agric. Dec. \_\_ (Aug. 3, 2011). The Judicial Officer rejected KDLO's contention that the failure to hold a hearing deprived KDLO of its rights under the due process clause of the Fifth Amendment to the United States Constitution, stating, as KDLO admitted the material allegations of fact in the Complaint, there were no issues of fact on which a meaningful hearing could be held and issuance of a decision without hearing does not deprive KDLO of its rights under the due process clause. KDLO contended the employment bar in the PACA, which would be imposed on Kevin Pederson, is punitive and unconstitutional and application of the employment bar to Mr. Pederson would deprive Mr. Pederson of his ability to make a living and provide for his family. The Judicial Officer stated the collateral consequences of the order against KDLO on an individual responsibly connected with KDLO were irrelevant to the proceeding, which involves only KDLO. The Judicial Officer rejected KDLO's contention that the Secretary of Agriculture cannot impose sanctions on KDLO for failure to pay Evans Fruit Co. because Evans Fruit Co. failed to preserve its trust rights. The Judicial Officer stated, when a produce buyer defaults on payment for produce, the buyer has committed a violation of 7 U.S.C. § 499b(4). The defaulting produce buyer is then subject to a sanction under the PACA. The produce buyer's violation of

the PACA is not negated merely because the produce seller, who has perfected its trust rights under the PACA, enters into a post-default payment agreement with the defaulting buyer, even if the post-default agreement causes the produce seller to forfeit the trust protection provided in 7 U.S.C. § 499e(c). The trust is a means to protect the produce seller's right to payment for produce; it is not a means to enforce the prompt payment provisions of the PACA in 7 U.S.C. § 499b(4). The Secretary of Agriculture can initiate an enforcement action against a defaulting buyer for a violation of 7 U.S.C. § 499b(4) without regard to any post-default agreement between the unpaid seller and the defaulting buyer.

In *In re Lancelot Kollman Ramos*, AWA Docket No. 10-0417, decided by the Judicial Officer on November 2, 2011, the Judicial Officer affirmed the Chief Administrative Law Judge's Order cancelling the hearing and dismissing the proceeding without prejudice. The Judicial Officer stated, as the Administrator has concluded that he is no longer prepared to proceed to oral hearing, there is no good reason to maintain the proceeding on the docket of the Office of Administrative Law Judges indefinitely while APHIS completes its investigation of Mr. Ramos.

In *In re Richard L. Reece* (Order Denying Pet. to Reconsider), P.&S. Docket No. 11-0213, decided by the Judicial Officer on November 4, 2011, the Judicial Officer denied Mr. Reece's petition to reconsider *In re Richard L. Reece*, \_\_ Agric. Dec. \_\_ (Oct. 17, 2011). The Judicial Officer rejected Mr. Reece's contention that his violations of the Packers and Stockyards Act were not willful and rejected Mr. Reece's contention that he is absolved of his obligation to pay for livestock in accordance with the Packers and Stockyards Act because he is owed money by others. The Judicial Officer also held that Mr. Reece was not deprived of his right to due process as he waived the opportunity for hearing by failing to file a timely answer to the Complaint. The Judicial Officer also rejected Mr. Reece's request that the Judicial Officer set aside *In re Richard L. Reece*, \_\_ Agric. Dec. \_\_ (Oct. 17, 2011), because Mr. Reece paid or entered into payment plans with the two livestock sellers named in the Complaint. The Judicial Officer stated the Packers and Stockyards Act requires market agencies and dealers purchasing livestock to pay the full amount of the purchase price before the close of the next business day following the purchase of the livestock and the transfer of possession of the livestock (7 U.S.C. § 228b(a)). Mr. Reece's payments after the time when payment was due and Mr. Reece's entry into payment plans do not comply with 7 U.S.C. § 228b(a). Moreover, Mr. Reece's failures to pay for livestock and failures to pay for livestock when due constitute unfair and deceptive practices, in violation of 7 U.S.C. § 213(a). The Judicial Officer also rejected Mr. Reece's request that he be given an opportunity to be heard on the amount of the civil penalty assessed for his violations of the Packers and Stockyards Act.

In *In re Melanie H. Boynes* (Order Denying Pet. to Reconsider), AWA Docket No. 11-0012, decided by the Judicial Officer on November 9, 2011, the Judicial Officer denied Ms. Boynes' petition to reconsider *In re Melanie H. Boynes*, \_\_ Agric. Dec. \_\_ (Oct. 18, 2011). The Judicial Officer rejected six factual assertions made by Ms. Boynes finding the record did not support Ms. Boynes' assertions or the asserted facts, even if true, would not change the disposition of the proceeding.

In *In re Carolyn & Julie Arends*, AWA Docket No. 11-0147, decided by the Judicial Officer on November 15, 2011, the Judicial Officer reversed the Administrative Law Judge's decision and concluded the Respondents were unfit to be licensed under the Animal Welfare Act and ordered termination of the Respondents' Animal Welfare Act license. The Judicial Officer found that the Respondents failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the Respondents were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer held: (1) the Administrator's Order to Show Cause is a complaint, as defined in the Rules of Practice (7 C.F.R. § 1.132); (2) the Respondents' delivery of their response to the Order to Show Cause to counsel for the Administrator does not constitute filing with the Hearing Clerk, as required by the Rules of Practice (7 C.F.R. §§ 1.136(a), .147(g)); (3) the ALJ's application of the Federal Rules of Civil Procedure to the proceeding was error; (4) the Respondents' settlement proposal does not deny, or respond to, any allegation in the Order to Show Cause, and, therefore, even if the settlement proposal had been timely filed with the Hearing Clerk, it would be deemed an admission of the allegations in the Order to Show Cause; (5) equitable tolling is not applicable to the proceeding, as the Rules of Practice do not provide for equitable relief; and (6) even if equitable tolling were available under the Rules of Practice, Julie Arends' illness and hospitalization and the Respondents' *pro se* status do warrant application of equitable tolling.

In *In re Jack L. Rader*, HPA Docket Nos. 11-0256 and 11-0257, decided by the Judicial Officer on November 17, 2011, the Judicial Officer affirmed the Administrative Law Judge's decision concluding Mr. and Mrs. Rader violated the Horse Protection Act. The Judicial Officer found that Mr. and Mrs. Rader failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), they were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer, citing 7 C.F.R. § 1.147(h), rejected Mr. and Mrs. Rader's contention that Saturdays, Sundays, and Federal holidays are not included in the computation of the time allowed for filing documents. The Judicial Officer, citing Mr. and Mrs. Rader's receipt of the Rules of Practice, rejected Mr. and Mrs. Rader's contention that they did not know how to request an extension of time within which to file their responses to the Complaint. The Judicial Officer further rejected Mr. and Mrs. Rader's contention that the Complaint should be dismissed because the Administrator failed to file the Complaint until 2 years after the alleged violations. The Judicial Officer held that an action by the United States in its governmental capacity is not subject to a time limitation absent enactment of a limitation and laches is not applicable to actions of the government. The Judicial Officer assessed Mr. and Mrs. Rader each a \$2,200 civil penalty and disqualified them for 1 year from showing, exhibiting, or entering any horse in any horse show, exhibition, sale, or auction.

In *In re Colorado Certified Potato Growers' Association, Inc.* (Remand Order), PVPA Docket No. 11-0201, decided by the Judicial Officer on December 12, 2011, the Judicial Officer held that, under the Plant Variety Protection Act and the applicable regulation (7 C.F.R. § 97.22), the Commissioner of the Plant Variety Protection Office has discretion to apply the "mailbox rule" to a request to revive an abandoned application for plant variety protection. The Judicial Officer remanded the proceeding to the Commissioner to determine whether to apply the "mailbox rule" to the request to revive the abandoned application for plant variety protection which was the subject of the proceeding.

In *In re Samuel S. Petro* (Decision as to Bryan Herr), PACA-APP Docket Nos. 09-0161 and 09-0162, decided by the Judicial Officer on January 18, 2012, the Judicial Officer concluded that Mr. Herr, ostensibly a 25 percent shareholder of Kalil Fresh Marketing, d/b/a Houston's Finest Produce Co., demonstrated by a preponderance of the evidence that he was not actively involved in the activities resulting in Houston's Finest's violations of the PACA and that he was only nominally a shareholder of Houston's Finest.

In *In re Barnesville Livestock, LLC*, P.&S. Docket No. D-10-0058, decided by the Judicial Officer on January 23, 2012, Barnesville and Darryl Watson appealed only the Chief Administrative Law Judge's 21-day suspension of Barnesville as a registrant under the Packers and Stockyards Act. The Judicial Officer affirmed the Chief ALJ's 21-day suspension stating: (1) the record did not support the Respondents' contention that their violations of the Packers and Stockyards Act over a 2 year 8 month period were "isolated" and (2) collateral effects of a sanction on a violator's business and the local economy in which the violator operates are generally given no weight in determining the sanction to be imposed for violations of the Packers and Stockyards Act since the national interest of having fair conditions in the livestock industry must prevail over a violator's interests and the interests of the violator's community. The Judicial Officer also rejected the Respondents' contention that the Chief ALJ failed to consider the Respondents' admissions of wrongdoing and cooperation with the USDA investigation when determining the appropriate sanction.

In *In re Harvey Rodriguez*, HPA Docket No. 11-0242, decided by the Judicial Officer on January 24, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding that Harvey Rodriguez violated 15 U.S.C. § 1824(2)(B) and Michelle Hastings violated 15 U.S.C. § 1824(2)(B) and (D). The Judicial Officer found that the Respondents failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the Respondents were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer stated that, under the Rules of Practice, a response to a complaint must be filed with the Hearing Clerk and the Respondents' response, which was apparently delivered to a person other than the Hearing Clerk and was never received by the Hearing Clerk, cannot be considered. The Judicial Officer rejected the Respondents' late-filed denial of the allegations of the Complaint stating the denials could not be considered. Finally, the Judicial Officer stated the argument that a previous sanction by a horse industry organization bars the Secretary of Agriculture from enforcing the Horse Protection Act has no merit.

In *In re Jack L. Rader* (Order Denying Pet. to Reconsider), HPA Docket Nos. 11-0256 and 11-0257, decided by the Judicial Officer on January 30, 2012, the Judicial Officer denied Jack L. Rader and Barbara L. Rader's petition to reconsider *In re Jack L. Rader*, \_\_\_ Agric. Dec. \_\_\_ (Nov. 17, 2011). The Judicial Officer rejected the Respondents' contention that they filed a timely response to the Complaint stating the record did not support their contention. The Judicial Officer also noted that the Respondents' contention was contrary to their position earlier in the proceeding in which they conceded that their response to the Complaint was late-filed. The Judicial Officer stated that, generally, a party is not allowed to argue a position in a petition to reconsider that is contrary to the position taken earlier in the proceeding.

In *In re Bodie S. Knapp* (Ruling Denying Mr. Knapp's Mot. to Strike), AWA Docket No. 09-0175, decided by the Judicial Officer on January 30, 2012, the Judicial Officer denied Mr. Knapp's motion to strike the Administrator's appeal petition. The Judicial Officer found the Administrator filed a request for an extension of time to file an appeal petition before the time for filing the appeal petition had expired. The Judicial Officer, citing the delegations of authority by the Secretary of Agriculture (7 C.F.R. pt 2), rejected Mr. Knapp's contention that the Chief Administrative Law Judge was the Administrator's employee.

In *In re Bodie S. Knapp* (Ruling Granting the Administrator's Mot. to Strike Mr. Knapp's Pet. for Attorney Fees and Other Expenses), AWA Docket No. 09-0175, decided by the Judicial Officer on January 31, 2012, the Judicial Officer granted the Administrator's motion to strike Mr. Knapp's request for attorney fees and other expenses concluding the request was premature as there had been no final agency disposition of the proceeding prior to the request as required by the Equal Access to Justice Act (5 U.S.C. § 504(a)(2)) and the Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department (7 C.F.R. § 1.193).

In *In re Kathy Jo Bauck* (Decision as to Peggy Weise), AWA Docket No. 11-0088, decided by the Judicial Officer on February 9, 2012, the Judicial Officer affirmed the Administrative Law Judge's dismissal of the First Amended Complaint with prejudice. The Judicial Officer stated the right of a party instituting a proceeding under the Rules of Practice to voluntarily withdraw a complaint and reinstitute the proceeding should be preserved, except under unusual circumstances. However, the Complainant had failed to file a motion to withdraw the Complaint and, under the circumstances, the ALJ's dismissal of the Complaint with prejudice was not error.

In *In re Barnesville Livestock, LLC* (Order Granting Respondents' Mot. to Modify Order), P.&S. Docket No. D-10-0058, decided by the Judicial Officer on March 1, 2012, the Judicial Officer granted Barnesville and Darryl Watson's unopposed motion to modify the effective date of the Order suspending Barnesville as a registrant under the Packers and Stockyards Act set forth in *In re Barnesville Livestock, LLC*, \_\_\_ Agric. Dec. \_\_\_ (Jan. 23, 2012).

In *In re Robert Morales Cattle Co.*, P.&S. Docket No. D-11-0406, decided by the Judicial Officer on March 6, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding the Respondents: (1) failed to pay, when due, the full purchase price of livestock, in violation of 7 U.S.C. §§ 213(a) and 228b; (2) failed to keep and maintain records which disclosed all transactions, as required by 7 U.S.C. § 221; and (3) failed to issue scale tickets in conformity with 9 C.F.R. §§ 201.49 and 201.73-1. The Judicial Officer found the Respondents failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the Respondents were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer held that the Rules of Practice do not require that the Hearing Clerk inform parties that a timely answer has not been filed; therefore, the fact that the Respondents did not receive the Assistant Hearing Clerk's letter informing them of the failure to file a timely response to the Complaint is not relevant to this proceeding. The Judicial Officer rejected the Respondents' contention that their violations of the Packers and Stockyards Act and the Regulations were not willful stating, the Respondents engaged in such gross neglect of known duties that their violations of the Packers and Stockyards Act and the Regulations were the equivalent of intentional violations and were willful both under the standard applied by the United States Department of Agriculture and under the standard applied by the United States Court of Appeals for the Tenth Circuit. The Judicial Officer also rejected the Respondents' contention that, as they no longer purchase livestock, the Chief ALJ's order that they cease and desist from violations of the Packers and Stockyards Act is not applicable to them. The Judicial Officer stated nothing prohibits the Respondents from resuming operations under the Packers and Stockyards Act at any time; therefore, the Chief ALJ's cease and desist order is applicable to the Respondents. The Judicial Officer also rejected the Respondents' objection to the Chief ALJ's assessment of a \$16,500 civil penalty stating the Respondents' violations of the Packers and Stockyards Act and the Regulations warrant a severe sanction and the civil penalty assessed by the Chief ALJ conforms with that recommended by the Deputy Administrator.

In *In re Mohammad S. Malik*, P.&S. Docket No. D-12-0072, decided by the Judicial Officer on March 8, 2012, the Judicial Officer affirmed the Administrative Law Judge's decision



concluding the Respondents failed to pay the full purchase price for livestock within the time period required by the Packers and Stockyards Act (7 U.S.C. §§ 192(a) and 228b(a)). The Judicial Officer found the Respondents failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the Respondents were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer rejected the Respondents' request to set aside the ALJ's Default Decision stating the Respondents had not shown good cause for setting aside the ALJ's Default Decision and the Complainant had objected to setting aside the ALJ's Default Decision. The Judicial Officer also rejected the Respondents' request to suspend or waive the civil penalty. The Judicial Officer found that the factors cited by the Respondents as the bases for suspending or waiving the civil penalty were not adequate. The Judicial Officer also rejected the Respondents' contention that their violations of the Packers and Stockyards Act were not intentional. The Judicial Officer ordered the Respondents to cease and desist from failing to pay, when due, the full purchase price of livestock, as required by 7 U.S.C. § 228b(a), and assessed the Respondents, jointly and severally, a \$31,600 civil penalty.

In *In re Jack L. Rader* (Order Granting Joint Request to Modify Order), HPA Docket Nos. 11-0256 and 11-0257, decided by the Judicial Officer on March 8, 2012, the Judicial Officer granted the parties' Joint Request to Modify the Order issued in *In re Jack L. Rader*, \_\_\_ Agric. Dec. \_\_\_ (Nov. 17, 2011). Based upon the agreement of the parties, the Judicial Officer vacated the Order in *In re Jack L. Rader*, \_\_\_ Agric. Dec. \_\_\_ (Nov. 17, 2011), and issued a new order disqualifying Mr. Rader and Mrs. Rader effective retroactively on March 1, 2012.

In *In re H.D. Edwards* (Order Denying Late Appeal), P.&S. Docket No. D-10-0296, decided by the Judicial Officer on March 15, 2012, the Judicial Officer denied the Deputy Administrator's appeal petition filed 22 days after the Administrative Law Judge's oral decision became final. The Judicial Officer held, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.

In *In re GH Dairy*, AMA Docket No. M 10-0283, decided by the Judicial Officer on April 24, 2012, the Judicial Officer denied GH Dairy's Petition seeking to set aside a final decision published at 75 Fed. Reg. 10,122 (Mar. 4, 2010) and an implementing final rule published at 75 Fed. Reg. 21,157 (Apr. 23, 2010). The Judicial Officer concluded that the Secretary of Agriculture had authority under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. §§ 601-674) to issue a rule regulating producer-handlers who do not purchase milk. The Judicial Officer rejected GH Dairy's contentions that: (1) the Final Rule violated the AMAA's prohibition on trade barriers in 7 U.S.C. § 608c(5)(G); (2) the Final Rule did not comply with the "only practical means" requirement of the AMAA in 7 U.S.C. § 608c(9)(B); (3) the Final Rule did not comply with the Regulatory Flexibility Act; (4) the Final Decision and Final Rule are not supported by substantial evidence; and (5) critical evidence was excluded from the formal rulemaking proceeding upon which the Final Decision and Final Rule are based.

In *In re Michael V. Bott*, P.&S. Docket No. D-11-0438, decided by the Judicial Officer on May 8, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision

concluding that Michael V. Bott and Tony Bott violated the Packers and Stockyards Act by failing to pay, when due, the full amount of the purchase price of livestock (7 U.S.C. §§ 213(a), 228b) and by failing to keep records which fully and correctly disclose all the transactions involved in their business (7 U.S.C. § 221). The Judicial Officer issued a cease and desist order against the Botts and assessed the Botts, jointly and severally, a \$34,000 civil penalty. The Judicial Officer found the Botts failed to file timely answers to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the Botts were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer, citing *In re Sebastopol Meat Co.*, 28 Agric. Dec. 435 (1969), *aff'd*, 440 F.2d 983 (9th Cir. 1971), rejected the Botts' contention that the livestock sellers' acquiescence in late payments negated the Botts' violations of the Packers and Stockyards Act payment requirements. The Judicial Officer held the Packers and Stockyards Program's failure to enforce the Packers and Stockyards Act against everyone was not relevant to the proceeding; the decision of whether and when to exercise enforcement powers is left to agency discretion.

In *In re Cheryl A. Taylor* (Decision on Remand), PACA-APP Docket Nos. 06-0008 and 06-0009, decided by the Judicial Officer on May 22, 2012, the Judicial Officer applied the "actual, significant nexus" test, as described in *Taylor v. U.S. Dep't of Agric.*, 636 F.3d 608 (D.C. Cir. 2011), to determine whether Ms. Taylor and Steven C. Finberg were responsibly connected with Fresh America Corporation during the time the corporation violated the PACA. The Judicial Officer concluded that both Ms. Taylor and Mr. Finberg proved that they were only nominal officers of Fresh America; however, the Judicial Officer concluded that Ms. Taylor failed to prove by a preponderance of the evidence that she was not actively involved in the activities resulting in Fresh America's PACA violations. Therefore, the Judicial Officer held that Ms. Taylor was responsibly connected with Fresh America and was subject to the employment and licensing restrictions in the PACA (7 U.S.C. §§ 499d(b), 499h(b)). The Judicial Officer stated, in light of the "actual, significant nexus" test described in *Taylor v. U.S. Dep't of Agric.*, 636 F.3d 608 (D.C. Cir. 2011), in future cases, he would abandon the use of the "actual, significant nexus" test to determine whether a person was nominally a partner, officer, director, or shareholder; instead, the inquiry as to whether a person is only nominally a partner, officer, director, or shareholder would be limited to whether the person is a partner, officer, director, or shareholder in name only.

In *In re Terranova Enterprises, Inc.* (Remand Order), AWA Docket No. 09-0155, decided by the Judicial Officer on May 23, 2012, the Judicial Officer remanded the Equal Access to Justice Act proceeding to the Administrative Law Judge for issuance of an initial decision on the fee application filed by Craig Perry and Perry's Wilderness Ranch & Zoo, Inc. The Judicial Officer suggested that the ALJ issue an order amending the case caption to reflect the fact that only Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., filed an EAJA Application and request that the Hearing Clerk assign a new docket number to the EAJA proceeding so as to avoid any confusion with an Animal Welfare Act case, *In re Terranova Enterprises, Inc.*, AWA Docket No. 09-0155, that was pending before the Judicial Officer.

In *In re Richard Hale*, P.&S. Docket No. D-12-0204, decided by the Judicial Officer on June 18, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision

concluding Richard Hale failed to pay the full purchase price for livestock within the time period required by the Packers and Stockyards Act. The Judicial Officer found Mr. Hale failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Hale was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer denied Mr. Hale's request for appointed counsel stating a respondent who is unable to obtain counsel has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in a disciplinary administrative proceeding conducted under the Packers and Stockyards Act. In response to Mr. Hale's statement that he wanted "to go to court," the Judicial Officer stated that the Rules of Practice (7 C.F.R. § 1.145(i)) provide that the Judicial Officer's decision is a final agency decision for the purposes of judicial review and Mr. Hale has the right to seek judicial review of the decision in the appropriate United States Court of Appeals in accordance with 28 U.S.C. § 2341-2350.

In *In re Claypoole Livestock, Inc.*, P.&S. Docket No. D-12-0135, decided by the Judicial Officer on June 20, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding Claypoole Livestock, Inc., and Timothy J. Claypoole failed to pay the full purchase price for livestock within the time period required by the Packers and Stockyards Act, issued insufficient funds checks in purported payment for livestock, and engaged in operations subject to the Packers and Stockyards Act without maintaining an adequate bond or bond equivalent, in willful violation of 7 U.S.C. §§ 213(a) and 228b and 9 C.F.R. §§ 201.29-.30. The Judicial Officer found the Respondents failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the Respondents were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer denied the Respondents' requests that the Judicial Officer reduce the amount of the civil penalty assessed by the Chief ALJ and modify the Chief ALJ's cease and desist order.

In *In re GH Dairy* (Order Denying Pet. to Reconsider), AMA Docket No. M 10-0283, decided by the Judicial Officer on June 21, 2012, the Judicial Officer denied GH Dairy's Petition to Reconsider seven of the 12 issues previously addressed by the Judicial Officer in *In re GH Dairy*, \_\_\_ Agric. Dec. \_\_\_ (Apr. 24, 2012).

In *In re Tyson Farms, Inc.* (Ruling Denying Request for Oral Argument), P.&S. Docket No. D-12-0123, decided by the Judicial Officer on July 5, 2012, the Judicial Officer denied Tyson Farms, Inc.'s request pursuant to 7 C.F.R. § 1.145(d) for oral argument regarding the Chief Administrative Law Judge's certified request. The Rules of Practice provide that an appellant or an appellee may request oral argument pursuant to 7 C.F.R. § 1.145(d). The Judicial Officer held, as Tyson Farms, Inc., was not an appellant or an appellee in the proceeding, Tyson Farms, Inc.'s request for oral argument pursuant 7 C.F.R. § 1.145(d) must be denied.

In *In re Tyson Farms, Inc.* (Ruling on Certified Question), P.&S. Docket No. D-12-0123, decided by the Judicial Officer on July 6, 2012, the Judicial Officer determined that the Secretary of Agriculture has statutory authority to proceed with an action against Tyson Farms, Inc., for the alleged underpayment of poultry growers in violation of 7 U.S.C. § 228b-1 and an alleged unfair practice in violation of 7 U.S.C. § 192.

In *In re Terranova Enterprises, Inc.* (Decision as to Craig Perry and Perry's Wilderness Ranch & Zoo, Inc.), AWA Docket No. 09-0155, decided by the Judicial Officer on July 19, 2012, the Judicial Officer concluded that Craig Perry and Perry's Wilderness Ranch & Zoo, Inc., failed to allow Animal and Plant Health Inspection Service officials to enter their place of business, in willful violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126. The Judicial Officer agreed with the Administrative Law Judge's dismissal of the other violations that Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., were alleged to have committed. The Judicial Officer ordered Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., to cease and desist their violations of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126 and assessed them, jointly and severally, a \$500 civil penalty.

In *In re For the Birds, Inc.* (Decision as to Raymond Willis), AWA Docket No. 09-0196, decided by the Judicial Officer on August 7, 2012, the Judicial Officer affirmed the Administrative Law Judge's decision concluding that Raymond Willis violated the Animal Welfare Act and the Regulations as alleged in the Complaint. The Judicial Officer found Mr. Willis failed to appear at the hearing and held, under the Rules of Practice (7 C.F.R. § 1.141(e)(1)), Mr. Willis was deemed to have admitted the facts presented at the hearing, admitted the allegations in the Complaint, and waived the opportunity for oral hearing. The Judicial Officer rejected Mr. Willis's contention that the ALJ deprived him of due process by changing the place of the hearing and by allowing 10 witnesses to testify by telephone. The Judicial Officer ordered Mr. Willis to cease and desist from violating the Animal Welfare Act and the Regulations, disqualified Mr. Willis from obtaining an Animal Welfare Act license, and assessed Mr. Willis a \$6,000 civil penalty.

In *In re Claypoole Livestock, Inc.* (Order Granting Complainant's Mot. to Modify Order), P.&S. Docket No. D-12-0135, decided by the Judicial Officer on August 15, 2012, the Judicial Officer granted the Deputy Administrator's motion to extend the time for Claypoole Livestock, Inc., and Timothy J. Claypoole to pay the civil penalty assessed in *In re Claypoole Livestock, Inc.*, \_\_ Agric. Dec. \_\_ (June 20, 2012).

In *In re Meza Sierra Enterprises, Inc.*, PACA Docket No. D-10-0250, decided by the Judicial Officer on August 17, 2012, the Judicial Officer affirmed the Administrative Law Judge's decision revoking Meza Sierra's PACA license for its failure to pay a produce seller for perishable agricultural commodities in accordance with 7 U.S.C. § 499b(4) and 7 C.F.R. § 46.2(aa). The Judicial Officer, citing 7 C.F.R. § 2.27(a)(1), rejected Meza Sierra's contention that the ALJ did not have jurisdiction to hear and decide the case. The Judicial Officer, citing 7 C.F.R. § 1.131(a) and *In re Midland Banana & Tomato Co.*, 54 Agric. Dec. 1239 (1995), also rejected Meza Sierra's contention that the Rules of Practice (7 C.F.R. §§ 1.130-.151) were not applicable to the proceeding. The Judicial Officer found the ALJ properly took official notice of a Texas state court proceeding in which Meza Sierra was found to have failed to pay its produce seller \$215,385 for tomatoes. The Judicial Officer held the Secretary of Agriculture's purported failure to advise Meza Sierra's produce seller to file a formal reparation complaint against Meza Sierra had no bearing on the disciplinary case against Meza Sierra. The Judicial Officer held that, even if Meza Sierra's PACA license had previously expired, the Secretary of Agriculture was authorized under 7 U.S.C. § 499h(a) to issue an order revoking Meza Sierra's PACA license.

In *In re Jeffrey W. Ash*, AWA Docket No. 11-0380, decided by the Judicial Officer on September 14, 2012, the Judicial Officer terminated Jeffrey W. Ash's Animal Welfare Act license based upon Mr. Ash's conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20. The Judicial Officer found Mr. Ash's conviction arose out of his exhibition of animals and concluded, under the circumstances in *People v. Ash*, Case No. I-192-2010 (Crim Ct, Washington County Apr. 29, 2011), New York Penal Law § 120.20 was a state law pertaining to ownership and welfare of animals as provided in 9 C.F.R. § 2.11(a)(6); therefore, Mr. Ash's conviction provided a basis for termination of his Animal Welfare Act license under 9 C.F.R. § 2.12. The Judicial Officer rejected Mr. Ash's contention that his conviction of violating New York Penal Law § 120.20 could not be the basis for terminating his Animal Welfare Act license because the indictment charging him with violations of New York Penal Law § 120.20 was defective and he only plead guilty to save the expense of defending against the indictment. The Judicial Officer stated Mr. Ash cannot relitigate his past criminal conviction in an Animal Welfare Act license termination proceeding and the proper forum in which to contest his conviction is the State Courts of New York. The Judicial Officer also concluded Mr. Ash's conviction of reckless endangerment in the second degree establishes willfulness; therefore, the Administrator was not required to give Mr. Ash written notice of the facts or other conduct concerned and an opportunity to demonstrate or achieve compliance prior to instituting the proceeding, as provided in 5 U.S.C. § 558(c) and 7 C.F.R. § 1.133(b)(3).

In *In re Sammy Simmons*, P.&S. Docket No. D-12-0131, decided by the Judicial Officer on September 20, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding Sammy Simmons and Wendy Simmons issued insufficient funds checks in purported payment of the net proceeds due for livestock sold on commission, failed to remit, when due, the net proceeds due from the sale price of livestock sold on commission, and allowed a deficiency in their custodial account, in willful violation of 7 U.S.C. §§ 208 and 213(a) and 9 C.F.R. §§ 201.42-.43. The Judicial Officer found the Respondents failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the Respondents were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer denied the Respondents' request that the Judicial Officer reduce or eliminate the \$58,000 civil penalty assessed by the Chief ALJ.

In *In re Robert M. Self* (Order Denying Late Appeal), P.&S. Docket No. D-12-0167, decided by the Judicial Officer on September 24, 2012, the Judicial Officer denied Robert M. Self's appeal petition filed 14 days after the Chief Administrative Law Judge's written decision became final. The Judicial Officer held, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.

The following are the five cases that were pending before the Judicial Officer on the last day of FY 2012, September 30, 2012.

**PENDING CASES APPEALED TO THE JUDICIAL OFFICER**

1. *In re Samuel S. Petro*, PACA APP Docket Nos. 09-0161 & 0162  
Referred to the Judicial Officer on March 22, 2012
2. *In re Bodie S. Knapp*, AWA Docket No. 11-0147  
Referred to the Judicial Officer on March 28, 2012
3. *In re H.D. Edwards*, P&S Docket No. D-10-0296  
Referred to the Judicial Officer April 19, 2012
4. *In re Craig Perry*, AWA Docket No. 05-0026  
Referred to the Judicial Officer July 30, 2012
5. *In re Le Anne Smith*, AWA Docket No. 05-0026  
Referred to the Judicial Officer July 30, 2012